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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 Tommy Canterbury,

12 Plaintiff,

13 v.

14 Acara Solutions, Inc.; Siemens Mobility, Inc.;

15 Does 1 through 10,

16 Defendants.

No. 20-cv-02361-KJM-KJN

ORDER

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18 Tommy Canterbury brings this case against Acara Solutions, Inc., Siemens Mobility Inc.,  
19 and Does 1–10<sup>1</sup> for violation of California’s Fair Chance Act, Cal. Gov’t. Code § 12952. Acara  
20 now moves for judgment on the pleadings. **The court grants the motion**, for the reasons  
21 provided below.

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<sup>1</sup> If defendants’ identities are unknown when the complaint is filed, plaintiffs have an opportunity through discovery to identify them. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). But the court will dismiss such unnamed defendants if discovery clearly would not uncover their identities or if the complaint would clearly be dismissed on other grounds. *Id.* at 642. The federal rules also provide for dismissing unnamed defendants that, absent good cause, are not served within 90 days of the complaint. Fed. R. Civ. P. 4(m).

## I. BACKGROUND

Acara, an employment agency, hired Canterbury as a temporary welder for Siemens. Compl. ¶ 10, Not. Of Removal Ex. A, ECF No. 1-3. Canterbury then applied for a permanent position with Siemens. *Id.* ¶ 12. Canterbury underwent a background check as part of the application process. *Id.* The background check uncovered his felony conviction from two years before. *Id.* ¶ 14. Siemens and Acara told him not to show up to work, and Acara terminated his contract. *Id.* ¶ 21. Canterbury alleges Siemens and Acara terminated him based on his conviction without seeking an explanation. *Id.* ¶ 14.

Canterbury claims the termination violated California Government Code § 12952, which restricts inquiries into criminal history. After exhausting his administrative remedies, *id.* ¶¶ 15, 18, he filed this case in state court, *see generally* Compl. The defendants then removed the case to this court, invoking federal diversity jurisdiction. Not. of Removal, ECF No. 1. Acara now moves for judgment on the pleadings. Mot. J. on the Pleadings at 1–2, ECF No 14. The motion is fully briefed. Opp’n, ECF No. 16; Reply, ECF No. 18. The court submitted the matter without oral argument. Min. Order, ECF No. 17.

## II. LEGAL STANDARD

“After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). A Rule 12(c) motion is “functionally identical” to a Rule 12(b)(6) claim, thus the same standard of review applies. *Gregg v. Hawaii, Department of Public Safety*, 870 F.3d 883, 887 (9th Cir. 2017); *Baiul v. NBC Sports, a division of NBCUniversal Media, LLC*, 732 Fed. App’x 529, 531 (9th Cir. 2018) (unpublished) (affirming district court’s dismissal of plaintiff’s claims based on res judicata because Rule 12(b)(6) and Rule 12(c) motions have same standard of review). A plaintiff must support each claim for relief with factual allegations that allow the court to draw a plausible inference of the defendants’ potential liability. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). When considering a Rule 12(c) motion, the court assumes all factual allegations in the pleadings are true and draws inferences in favor of the non-moving party.

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1 *Gregg*, 870 F.3d at 886–87 (quoting *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999)); *see*  
 2 *also Doutherd v. Motesdeoca*, No. 17-02225, 2021 WL 1784917, at \*3 (E.D. Cal. May 5, 2021).

### 3 **III. ANALYSIS**

4 Acara argues Canterbury cannot state a claim against it under section 12952 because he  
 5 did not apply for a position with Acara, but rather with Siemens. Mot. J. Pleadings at 8; *see also*  
 6 Reply at 4–5.

7 Section 12952 of the California Government Code prohibits employers from inquiring  
 8 into an applicant’s conviction history until after a conditional offer of employment has been  
 9 made. Cal. Gov’t Code § 12952(a)(2). Employment agencies like Acara are subject to this  
 10 statute. *See* Cal. Gov’t Code §§ 12926(d)–(e); Cal. Code Regs. Tit. 2, § 11008(e) (2019). The  
 11 Government Code does not define “applicant” for purposes of section 12952, but the agency  
 12 charged with administering section 12952, the Fair Employment and Housing Council (FEHC),  
 13 *see* Cal. Gov’t Code § 12935, has defined that term. California courts give considerable weight to  
 14 an administrative agency’s construction of its regulations and statutes, as well as deference to the  
 15 agency’s administrative interpretation. *See Jimenez v. U.S. Cont’l Mktg., Inc.*, 41 Cal. App. 5th  
 16 189, 196–97 (2019) (giving weight to FEHC’s definition for “employee”). The FEHC interprets  
 17 “applicant” as:

18 Any individual who files a written application or, where an employer or other  
 19 covered entity does not provide an application form, any individual who otherwise  
 20 indicates a specific desire to an employer or other covered entity to be considered  
 21 for employment. Except for recordkeeping purposes, “Applicant” is also an  
 22 individual who can prove that he or she has been deterred from applying for a job  
 23 by an employer’s or other covered entity’s alleged discriminatory practice.

24 Cal. Code Regs. tit. 2, § 11008(a).

25 Given the relationship between Canterbury and Acara, Canterbury does not fit this  
 26 definition. Canterbury applied directly to Siemens for a permanent position. Compl. ¶ 12. He  
 27 did not apply for a position with Acara, and he was not deterred from applying to Acara. Rather,  
 28 he alleges he was already working for Acara. *Id.* ¶ 10.

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1 Canterbury claims Acara terminated him based on his prior conviction. *Id.* ¶ 12. This  
2 theory is not viable. Section 12952 protects only applicants, not existing employees. *See* Cal.  
3 Gov’t Code § 12952. Canterbury urges a broader interpretation of the statute, that would prevent  
4 “a temporary staffing agency” from being “able to terminate an employee applying to a  
5 permanent position elsewhere based on information received in violation of [section 12952].”  
6 Opp’n at 3–4. That interpretation has no support in California law. Section 12952  
7 unambiguously refers to the “applicant” as the protected party, not to an “employee, an applicant,  
8 an unpaid intern or volunteer,” as the statute does elsewhere. *See* Cal. Gov’t Code § 12940.  
9 Canterbury’s interpretation would effectively eliminate this difference provided for by the  
10 legislature, a result to be avoided when interpreting California statutes. *See People v. Johnson*,  
11 28 Cal. 4th 240, 247 (2002).

12 Canterbury also appears to argue now that Acara is liable because it was a joint employer  
13 with Siemens. *See* Opp’n at 3–4. As noted, however, Canterbury was an employee of Acara  
14 before his conviction was uncovered, *see* Compl. ¶ 10, thus his claims cannot have arisen in his  
15 capacity as an applicant to Acara. Rather, his claims arose from his efforts to become a  
16 permanent employee of Siemens only. *Id.* ¶¶ 12, 14. Given Canterbury’s own pleading that he  
17 was only applying to one employer and the absence of new information to the contrary, that the  
18 defendants are joint employers under California law, his mere argument now does not save  
19 Canterbury’s claims. Furthermore, to the extent Canterbury’s argument effectively requests an  
20 expansion of California law regarding joint employment to include potential employers, the court  
21 declines to grant the request. *See Klingebiel v. Lockheed Aircraft Corp.*, 494 F.2d 345, 346–47  
22 (9th Cir. 1974) (“[T]he duty of the federal court is to ascertain and apply the existing California  
23 law, not to predict that California may change its law and then to apply the federal court’s notion  
24 of what that change might or ought to be.”).

25 Canterbury has not stated a claim against Acara. Acara asks the court to dismiss without  
26 leave to amend. Courts may decline to grant leave to amend if any amendment would be futile.  
27 *See Sonoma Cty. Ass’n of Retired Emps. v. Sonoma Cty.*, 708 F.3d 1109, 1117 (9th Cir. 2013).  
28 As Canterbury did not apply for a position with Acara, as relevant here, he cannot state a claim

1 against Acara. Amendment would be futile. The motion to dismiss is thus granted without leave  
2 to amend.

3 **IV. CONCLUSION**

4 For the reasons above Acara's motion for judgment on the pleadings is **granted without**  
5 **leave to amend.**

6 This order resolves ECF No. 14.

7 IT IS SO ORDERED.

8 DATED: February 1, 2022.

  
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CHIEF UNITED STATES DISTRICT JUDGE